THE HONOURABLE SMT JUSTICE T. MEENA KUMARI
AND
THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

W.P.No. 6559 of 2007

J U D G M E N T:
(Per T. Meena Kumari, J)

The Writ Petition is filed by one Akula Ramakka seeking a writ of habeas corpus directing the respondents to produce before the Court one Akula Pedda Subbarayudu Son of Nagabhusanam, aged 48 years resident of Ragithotapalem of Tadipatri town of Anantapur District, who is said to be presently detained in Central Jail, Cherlapally, Hyderabad and direct his release forthwith.

The case of the petitioner is that she is the mother of Akula Pedda Subbarayudu, who is kept under detention in Central Jail, Cherlapally, Hyderabad pursuant to the detention order passed by the 2nd respondent. The detenu was served with the grounds of detention after he was detained in the prison and the grounds of detention reveal that on 3.11.2005 at 10.00 a.m. the detenu was found in possession of a plastic can containing 10 lts. of I.D. Arrack in one Plastic can and therefore, a case was registered in Crime No. 198/05-06 under Section 7(A) Read with Section 8 (e) of A.P. Prohibition Act, 1995 and the charge sheet has been filed in the above crime which was registered as C.C.No. 110 of 2006 on the file of Judicial Magistrate of First Class, Tadipatri and that on 21.2.2006 at about 4-30 p.m. the detenu was found in possession of one Can containing 10 lts. of I.D. Arrack and therefore, another case was registered in Crime No. 281/2005-06 under Section 7(A) Read with 8(e) of A.P. Prohibition Act, 1995 and the charge sheet has been filed in the above crime which was registered as C.C.No. 111 of 2006 on the file of Judicial Magistrate of First Class, Tadipatri and that on 5.10.2006 at about

11-00 a.m. the detenu was found in possession of two polythene bags one containing 25 litrs of I.D. Arrack and another bag containing 20 ltrs. of I.D. Arrack and therefore, another case was registered in Crime No. 138/2006-07 and the same is pending in C.C.No. 249 of 2006 on the file of the Judicial Magistrate of First Class, Tadipatri. The grievance of the petitioner is that though the detenu has not committed any offence and he is not involved in any activities which attract the provisions of the Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986(for short, 'the Act'), the 2nd respondent has illegally passed the detention order dated 8.12.2006 alleging that the detenu has involved in the activities affecting the maintenance of public order. Though it is stated in the detention order that the detenu is involved in three crimes, the cases filed against two crimes i.e. C.C.No. 110 of 2005 in respect of Crime No.198 of 2005 and C.C.No.111 of 2006 in Crime No.281 of 2005 have already been disposed of by the learned Judicial Magistrate of First Class, Tadipatri in Lok Adalath on 25.4.2006 and those orders were not placed before the detaining authority and in so far as the third incident is concerned i.e. in Crime No.138 of 2006 the order releasing the detenu on conditional bail was not placed before the detaining authority and as such the relevant material was not placed before the detaining authority at the time of passing the order of detention. Therefore, it is prayed that the respondents may be directed to produce the detenu and release him forthwith.

The 2nd respondent filed a counter affidavit denying the allegations levelled in the Writ Petition. It is stated in the counter affidavit that upon perusal of the record placed before him the 2nd respondent is satisfied that the activities of the detenu fall within the definition of Boot-legger as defined under Section 2(b) of Act 1 of 1986 and accordingly the detention order was passed.

Heard both sides.

It has been contended by the learned counsel for the petitioner that the crime numbers which were relied on by the detaining authority are old in nature and two crimes have already been compounded by the learned Judicial Magistrate of First Class, Tadipatri in Lok Adalath and the detaining authority has relied on only Crime No. 138 of 2006, which is pending on the file of the Judicial Magistrate of First Class, Tadipatri in C.C.No. 249 of 2006.

The learned counsel for the respondents submit that the material placed before the detaining authority are sufficient to pass impugned order, but he has fairly submitted that according to the instructions, relevant material with regard to Crime No.138 of 2006, there is a bail and the bail application has not been placed before the detaining authority to the effect whether the petitioner is free or on condition in custody or not subjected to certain conditions in pursuance of bail not applied by the detaining authority Orders passed in Crime No.138 of 2006 and he also submitted that the matter is covered by the judgment of the apex Court reported in SUNILA JAIN Vs. UNION OF INDIA[1], which goes to show that whether the detenu on the date of passing of the order of detention was in custody or not, would be a relevant fact. It would also be a relevant fact that whether he is free on that date and if he is, whether he is subjected to certain conditions in pursuance to and in furtherance of the order of bail. If pursuant to or in furtherance of such conditions he may not be able to flee from justice, that may be held to be relevant consideration for the purpose of passing an order of detention, but the converse is not true. Some such other grounds raised in the application for bail and forming the basis of passing an order of bail may also be held to be relevant. It would, however, not be correct to contend that irrespective of the nature of the application for bail or irrespective of the nature of the restrictions, if any, placed by the court of competent jurisdiction in releasing the detenu on bail, the same

must invariably and mandatorily be placed before the detaining authority and the copies thereof shall be supplied to the detenu.

The learned Government Pleader on behalf of the learned Advocate General on instructions submit that the bail application of the said detenu in Crime No.138 of 2006 have not been placed before the detaining authority as per section 3(1)(2) read with Section 2(a) and 2(b) of A.P. Prevention of Dangerous Activities of Bootleggers Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986.

In view of the above submissions and also as no material is placed before this Court and following the judgment of apex Court, the Order passed by the 2nd respondent as confirmed by the 1st respondent is hereby quashed as the Supreme Court held that it is mandatory.

In the result, the Writ Petition is allowed and the detention order passed by the 2nd respondent dated 8.12.2006 as confirmed by the 1st respondent dated 25.1.2007 is hereby quashed and the Detenue-namely Akula Pedda Subbarayudu s/o late Nagabhushanam shall be set at liberty forthwith if he is not required in any other case.

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T. MEENA KUMARI, J

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G.CHANDRAIAH, J

17.4.2007

CHV

[1] (2006)3 S.C.C. 321